Supreme Court, U.S.
FILED

091507 JUN 8 - 2010

OFFICE OF THE CLERK

No.

In The
SUPREME COURT OF THE UNITED STATES

SEGUNDO SEUNOS, LLC,

Petitioner,

v.

NASRIN SATCHELL, *et al.*,

Respondents.

On Petition For a Writ of Certiorari
To the California Supreme Court

APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Court of Appeal, Second Appellate District, Division Three - Nos. B213 178B213251

S179457

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SEGUNDO SUENOS, LLC, Plaintiff and Appellant,

v.

NASRIN SATCHELL et al., Defendants and Respondents; and Consolidated Case.

The petition for review is denied.

SUPREME COURT
FILED

MAR 10 2010

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

APP 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

SEGUNDO SUENOS, LLC, a Texas Limited Liability Company, Plaintiff, v. NASRIN SATCHELL, et al.	CASE NO.: BC 358422 PROPOSED STATEMENT OF DECISION Trial Dates: 1/29/08, 1/31/08, 2/1/08
SEGUNDO SUENOS, LLC, a Texas Limited Liability Company, Plaintiff, v. TRACY L. DRAPER, et al.,	

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INTRODUCTION

This matter proceeded as a court trial, jury having been waived. Both cases were Related but tried separately. The matters were submitted for decision and the court initially found insufficient evidence of an assignment from Artist Rights Foundation, LLC ("ARF") to Segundo Suenos, LLC, A Texas limited liability Company and thenpermitted the case to be reopened over the objection of the Defendants so Plaintiff could attempt to prove a valid assignment. The matter was again taken under submission. The court, in considering the arguments of counsel in the Satchell matter, asked for further briefing on the issue of whether the Ohio Probate court's ruling finding the assignment of ARF in "the best interest of these children" was binding in this court. The court received additional briefing on these issues. The court having considered the oral and documentary evidence, arguments and legal briefs, hereby issues its statement of decision making the following findings. As to *Segundo Suenos v. Nasrin Satchell* (BC 355571), the court finds that the Ohio Probate court's findings are not binding upon this court and collateral estoppel does not apply. As to both cases, the court finds that Plaintiff Segundo Suenos, LLC has not sufficiently proved the assignment from ARF therefore lacks standing as to both cases and therefore Plaintiff takes nothing in these lawsuits. As to the cross complaint in the *Segundo Suenos v. Patricia Middlebrooks* BC 358422, the court would request additional briefing on the propriety of proceeding on a cross complaint

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when, as Defendant maintains, Plaintiff lacks standing to sue.

FACTS

This case involves the question of ownership of royalty rights of a legendary musical group. "The Ohio Players" were an enormously popular funk/soul band formed in 1959 and enjoyed their greatest success in the seventies with such hits as "Love Rollercoaster" and "Fire." The group included as band members saxophonist/guitarist Clarence Satchell and trumpeter/trombonist Ralph Middlebrooks. Clarence Satchell died in December 1995.

A probate estate for the estate of Clarence Satchell was opened in 1997.

Defendants are Nasrin Satchell ("Nasrin") and her four children named Alexis Satchell, Clarence Satchell, Desirae Satchell and Shawdee Satchell (collectively the "Children"). Nasrin is the widow of Clarence Satchell ("Decedent"). Decedent is the father of the children.

Ralph Middlebrooks died in late 1996. Patricia Middlebrooks died in 2006. Ms. Draper-Blunt was named as representative of Ms Middlebrooks as the executor of the estate. Plaintiff sued Tracy Draper-Blunt and Ray Gaddis both in their individual capacities and their capacities as the co-executors of the Ralph Middlebrooks' Estate. Defendant disputes

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many of these characterizations.

At the time of the purported assignments in both cases were allegedly signed, Raul Galaz was a lawyer who graduated from Stanford law school and formed a business named Artist Rights Foundation, LLC ("ARF") to secure the rights from recordings artists who believed they were getting none or insufficient royalties from their recordings. In the business of securing the rights for individuals, during this time, he was targeted in an FBI probe for misappropriating the copyright rights of certain individuals by fraudulently representing that rights were owned by ARF that were, in fact, owned by others. Raul Galaz pled guilty to a felony in federal court, served 14 months in prison, and was disbarred from the practice of law. He is no longer a member of any bar.

Satchell Assignment

In June or July of 1998, Nasrin Satchell was approached by Raul Galaz ("Galaz") and asked if he could assist them in the collection of royalties from various third parties that owed her and the children.

On June 4, 2004, Nasrin Satchell purportedly entered into an assignment agreement transferring to Galaz's company, Artist Rights Foundation, LLC ("ARF") 100% of all "right, title and interest throughout the universe in and to the Works." (the

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"Agreement", Exhibit "1") The "Works" included all musical compositions composed by and sound recordings made by Decedent.

Galaz testified that ARF made no royalty payments to Nasrin Satchell or the Children from 1998 to the present. Galaz testified that in 2005, Segundo Suenos collected approximately $150,000 from Universal Music. Galaz testified that in 2005, ARF's rights under the Agreement were assigned to Segundo Suenos. Although an assignment was introduced at trial when the case was re-opened, the assignment failed to identify the copyrights that were the subject of the assignment.

Middlebrooks Assignment

Raul Galaz testified that he met with Patricia Middlebrooks and Tracy-Draper and Ray Gaddis. He spoke to them about assigning rights of the estate's share of the royalties from "The Ohio Players." Mr. Galaz testified that he left them a form which he later stated was signed by the parties, including the late Patricia Middlebrooks. Ms Tracy-Draper and Mr. Gaddis did not remember signing the form. Exhibit One. This purported assignment to ARF constituted an assignment of 100% of the right, title, and interest throughout the universe in and to the sound recordings, musical compositions, and trademarks, composed, recorded, and utilized by Mr. Middlebrooks, and in and to any derivative versions thereof.

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Defendants claim that necessary parties have not been served to adjudicate this Matter since the following heirs of Ralph Middlebrooks and Patricia Middlebrooks had no notice and did not appear in this action: Tammy Miller, Tricia Wood, Toni Middlebrooks, Tina Middlebrooks, Ralph Middlebrroks, Jr., and Deborah Smith. The heirs of Patricia Middlebrooks are Ralph Middlebrooks,Jr., Deborah Smith, Terri Golum, Tina Thomas, Tammy Miller, Trisha Woods, Toni Middlebrooks, Barron Woods II, and Ernest Swain.[1]

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1 Plaintiff insists that Ohio law permits the executors of an estate to bind the heirs of the estates and herefore no notice needs be given to the heirs. Plaintiffs Proposed Statement of Decision, page 3. Defendant counters by contending that not only are the heirs of the estate indispensible parties, but further that Plaintiff has improperly bypassed probate court to attempt to effectuate this assignment. Defendant's Proposed Statement of Decision, page 15, 27. Based on the court's ruling that Plaintiff has failed to prove a valid assignment, it is unnecessary and possibly inappropriate to resolve these issues as well as to whether there was considered for the alleged assignment, whether there was adequate proof of an assignment, consideration, performance, and whether either the statute of limitations or equitable estoppel should further prevent Plaintiff from pursuing this action. The court awaits further briefing on the issue of proceeding on the Cross-Complaint.

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Causes of Action

The Second Amended Complaint of the Middlebrooks Complaint (BC 358422) includes a cause of action for breach of contract and declaratory relief. Draper-Blunt filed a cross-complaint with a cause of action for money had and received.

The sole cause of action in the Satchell Complaint (BC 355571) is for declaratory relief.

Threshold Legal Questions

The Ohio Probate Court Ruling in Satchell is Not Binding on this court in BC358422

In July of 2006, the Administrator of the Estate of Clarence Satchell, Harry Beyoglides, Jr. moved the Probate Court to release all remaining funds to Plaintiff. He testified that had been collecting royalties and administering them to the estate when he discovered that Nasrin Satchell on behalf of herself and her four children had executed an assignment of their rights to he Artists Rights Foundation (ARF) on June 4, 1998, prior to expiration of the initial term. Mr. Beyoglides testified in Ohio that, in his opinion, it was in the best interests of the children to affirm the assignment to ARF because "it will keep people from cheating the Satchell family members and infringing on their rights." (page 7, hearing of Ohio Probate Court dated July 20, 2006. Defendants opposed, denying the validity of the agreement with Am.

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Defendant Nasrin Satchell appeared at the Ohio Probate Court hearing and testified, disputing the assignment. The court stopped her and stated:

> . . . . I mean I understand you have concerns about what has been done and regarding the Assignments. But I have no authority to do anything about that today or at all. That is something you have to handle in Federal Court. And I'm not sure prior the time you came in there is some lawsuits going in California regarding that very issue. I have no authority to deal with that. Probate Transcript, page 18 (emphasis added).

Without questioning the validity of the assignment or allowing testimony on the issue, the Ohio Probate court concluded that the assignments were "in the best interests of these children."

A second action between the same parties on a different cause of action is not precluded by a former judgment, but the first judgment "operates as an estoppel adjudication as to such issues in the second action as were actually litigated and determined in the first action. *Todhunter v. Smith* (1934) 219 Cal. 690, 695. Collateral estoppel is also referred to as "issue preclusion." Rest. 2d, Judgments, Chap. 1, p. 1; Rest.2d, Judgments Section 27 et seq.

No issues have been precluded through collateral estoppel because the court in Ohio specifically refused to litigate any of the issues raised

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by this lawsuit. This court, having sat through this trial, heard the witnesses and considered all of the issues raised, would be ready to rule on these issues if Plaintiff could demonstrate standing.. Has Assienment From ARF to Segundo Suenos Been Proven? If the assignment from ARF to Segundo Suenos is not valid, Segundo Suenos has no standing to bring this action. All civil actions must be prosecuted in the name of the real party in interest. Code of Civil Procedure Section 367. A plaintiff who is not the real party in interest does not have standing and cannot state a valid cause of action. *McKinny v. Board of Trustees* (1982) 31 Cal. 3d 79,90. This action was brought by Segundo Suenos as the assignee of ARF.

17 U.S.C. Section 204(a) of the Copyright Act provides that for a valid transfer of copyright ownership, there must be "an instrument of conveyance, or a note of the rights conveyed . . . " *Konigsberg Intern. Inc. v. Rice* (9" Cir. 1994) 16 F.3d 355,359. When reopening the case, the Plaintiff introduced Plaintiffs Exhibit 14, is a document, apparently signed by Raul Galaz, which purports to transfer interest in "sound recordings, musical compositions and i i trademarks, composed, recorded and unitized by the undersigned, and any derivate versions thereof (collectively, the "Works"), including the Works attached hereto as Exhibit "A" . . ." There was no exhibit A produced in court at the hearing with Exhibit 14, notwithstanding the fact that the court reopened trial precisely so Plaintiff could prove this assignment. None of the names of the songs or

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the recording artists involved are referred to in Exhibit 14. The testimony of Raul Galaz is inadmissible to prove the contents of this purported assignment. Evidence Code Sections 412, 500,780,788, and 1523. *Pamiloff v. Giant Records*, Inc. (N.D. Cal. 1992) 794 F.Supp. 933,936.

Even if evidence of a written assignment had been presented, no evidence was presented that Galaz had authority to act on behalf of ARF. When ARF was formed, it was formed as a limited liability company with interests to be divided equally between Galaz and his partner Julian Jackson ("Jackson"). In 2002, Galaz entered into an Agreement Incident to Divorce in which Galaz transferred a 25% interest in ARF to his ex-wife and retained a 25 % interest. (Exhibit 56, page 50). Presumably, Jackson controlled the remaining 50% interest in ARF.

Galaz testified that the principal asset of ARF was the Ohio Players musical rights. Galaz was the owner of only a 25% interest in ARF, clearly a minority shareholder. There was no evidence that Galaz had any actual authority, whether written or oral to transfer the rights in question. California Corporations Code Sections 17175, 1715 1, 17152, and 17350. Without written authority for Galaz to act on behalf of ARF, there is no valid assignment to Segundo Suenos. Civil Code Section 2309. Since the Copyright Act requires transfers of interests in writing, the authority to execute such a transfer must be in writing. Without written evidence of such

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authority, the purported transfer from ARF to Segundo Suenos is valid, and therefore Plaintiff has no standing to proceed with this lawsuit.

CONCLUSION

Based on the testimony and evidence presented at trial, this court finds Plaintiff lacks standing, therefore takes nothing from either lawsuit. The court would request additional briefing on the issue of the cross complaint in the Middlebrooks matter (BC358422) in light of the fact that 1) Plaintiff lacks standing and 2) Defendant alleges that indispensible parties have not been joined in the lawsuit.

DATED: 30 SEP 2008

Gregory W. Alarcon

GREGORY W. ALARCON
Judge of the Superior Court

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SEGUNDO SUENOS, LLC,
B213178

Plaintiff and Appellant,
(Los Angeles County)

Super. Ct. No. BC355571)
v.

NASRIN SATCHELL, et al.,

Defendants and Respondents.

SEGUNDO SUENOS, LLC,
B213251

Plaintiff and Appellant,
(Los Angeles County

Super. Ct No. BC358422)
v.

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TRACY L. DRAPER-BLUNT et al

Defendants and Respondents.

APPEALS from judgments of the Superior Court of Los Angeles County,

Gregory W. Alarcon, Judge. Judgment in B21325 1 is modified and affirmed; judgment

in B213178 is affirmed.

Pick & Boydston and Brian D. Boydston for Plaintiff and Appellant.

Law Office of Reginald K. Brown and Reginald K. Brown for Defendants and

Respondents, Nasrin Satchell et al.

Gershuni & Goldstein and Neal M. Goldstein for Respondents,

Tracy Draper-Blunt and Ray Gadis.

Clarence Satchell and Ralph Middlebrooks, both deceased, were members of an enormously popular funk/soul musical group called "The Ohio

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Players." After the death of both men, then-Attorney Raul Galaz[1] contacted their surviving spouses and purported to obtain from them full assignments of their rights to the music of the Ohio Players. Galaz allegedly obtained the surviving spouses' signatures on documents assigning their rights to Artist Rights Foundation (ARF), a limited liability company controlled, in part, by Galaz. Thereafter, ARF purported to assign its rights to the Ohio Players' music to Segundo Suenos, another limited liability company. Believing that the surviving spouses were obtaining royalties which belonged to Segundo Suenos, Segundo Suenos brought suit against the surviving spouses[2] for breach of their assignment

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1 Galaz has since been disbarred, upon conviction of a crime involving moral
turpitude

2 Segundo Suenos brought two actions. As relates to the rights of Ralph Middlebrooks, Ralph Middlebrooks's wife Patricia died some time after she allegedly signed the assignment to ARF. Segundo Suenos brought suit against Tracy L. Draper as co-executor of Ralph Middlebrooks's estate and co-administrator of Patricia Middlebrooks's estate; Ray Giddis as co-executor of Ralph Middlebrooks's estate and Trisha Woods as co-administrator of Patricia Middlebrooks's estate. (It does not appear that Segundo Suenos proceeded against Woods.) We refer to this as the Middlebrooks action; it has appellate case number B213251. As relates to the rights of Clarence Satchell, Segundo Suenos brought suit against his widow, Nasrin Satchell, and his children, Alexis Satchell, Clarence Satchell, Desiree Satchell and Shawdee Satchell. We refer to this as the Satchell action; it has appellate case number B213178.

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agreements to ARF. Segundo Suenos lost at trial, on the basis that it failed to establish the assignment from ARF to Segundo Suenos. Segundo Suenos appeals; we affirm.

PROCEDURAL BACKGROUND[3]

At trial, Segundo Suenos did not introduce into evidence documentary evidence of the purported assignment from ARF to Segundo Suenos. When, in their post-trial submissions, defendants challenged Segundo Suenos's standing to pursue the action,[4]

The two actions were deemed related, although tried separately on consecutive days. We have consolidated the two appeals for purposes of oral argument and decision.

3 As we resolve the appeal largely on procedural grounds, there is no need to discuss the facts beyond our brief introduction.

4 This is not to say that defendants did not challenge Segundo Suenos's standing before this time. For example, in the Middlebrooks trial, during the direct examination of Galaz, Segundo Suenos's counsel posed a question beginning with "to the extent that [ARF] has assigned its rights in the Middlebrooks royalties to Segundo Suenos . . . ." Defense counsel objected that the question assumed facts not in evidence. The court asked, "Is assignment an issue right now?" Segundo Suenos's counsel stated, "I don't know. I mean, not that I know of." The court stated, "I think it is with the defense." Defense counsel agreed, "Assignment is an

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Segundo Suenos represented that if the trial court reopened the trials, Segundo Suenos could successfully establish its standing.

On May 16,2008, the trials in both cases were reopened for the sole purpose of enabling Segundo Suenos to introduce evidence of the assignment to it from ARF. However, Segundo Suenos has declined to designate the reporter's transcript from May 16, 2008 as part of the record on appeal.[5] It is clear that testimony was taken at the reopened trial, and that at least one exhibit was introduced, but Segundo Suenos has not seen fit to provide us with the record of this key hearing.

It is undisputed, however, that Segundo Suenos introduced into evidence a one-page "Assignment" by which ARF purportedly assigned some rights to Segundo Suenos. The assignment makes reference to an "Exhibit 'A' " which supposedly identifies the works to which the assignment applied, but the Exhibit was not attached to the document introduced into evidence. In a later filing, Segundo Suenos attempted to place before the court both the assignment and a nine-page "Exhibit 'A.' " Segundo

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issue." Thus, Segundo Suenos was well aware that defendants challenged the supposed existence of an assignment from ARF to Segundo Suenos.

5 Nor has Segundo Suenos attempted to obtain a settled statement. (Cal. Rules of Court, rule 8.130(g).)

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Suenos represented that it had "asked the Court to take judicial notice" of the purportedly complete version of the assignment. There is no record of any request for judicial notice; if it occurred, it is not part of the appellate record,[6] and Segundo Suenos does not argue on appeal that the trial court erred in denying it.

The trial court concluded that the assignment from ARF to Segundo Suenos was not sufficiently established. The trial court found it significant that "[t]here was no Exhibit A produced in court at the hearing with [the assignment], notwithstanding the fact that the court reopened trial precisely so [Segundo Suenos] could prove this assignment." The court concluded the one-page assignment was insufficient to prove the assignment of the rights in the Ohio Players' music from ARF to Segundo Suenos.

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6 In Satchell appeal, Segundo Suenos successfully sought to augment the record with a supplemental brief it had filed, which was erroneously included in the Middlebrooks appellate record, rather than the Satchell appellate record. Counsel for Segundo Suenos represented in a declaration to this court that, attached to the supplemental brief is "a document which was entered into evidence as Exhibit 14 when the trial of this matter was reopened on May 16, 2008." This characterization of the attachment is not entirely accurate. The document attached to the supplemental brief includes a nine-page Exhibit A, which was not attached to the exhibit entered into evidence. Indeed, the supplemental brief itself references the purported request that the trial court take judicial notice of the complete version of the assignment.

The trial court also rejected an additional argument made by Segundo Suenos in the Satchell case - that the Satchell defendants were barred by collateral estoppel from challenging the assignment to Segundo Suenos. Segundo Suenos relied on a ruling by an Ohio probate court, confirming a distribution of royalty proceeds from Clarence Satchell's estate to Segundo Suenos.

Judgments were entered against Segundo Suenos in both actions. Segundo Suenos file timely notices of appeal.

DISCUSSION

I. Insufficient Assignment

The federal Copyright Act provides that "[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent." (17 U.S.C. § 204(a).) This requirement is "analogous to a statute of frauds." (Pamfiloffv. Giant Records, Inc. (N.D. Cal. 1992) 794 F.Supp. 933,936.) As such, "it is appropriate to borrow the requirements necessary to satisfy the statute of frauds to determine whether a given document satisfies [the Copyright Act]." (Ibid.) Thus, the "writing must[:] (1) reasonably identify the subject matter of the agreement, (2) be sufficient to indicate that the parties have come to an agreement, and (3)

state with reasonable certainty the essential terms of the agreement." (Ibid.)

The assignment agreement Segundo Suenos introduced at the reopened hearing provides, in full, "For good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby irrevocably transfers and assigns to SEGUENDO SUENOS LLC its successors and assigns, an undivided one hundred percent (1 00%) interest in and to the undersigned's collective right, title and interest throughout the universe in and to the sound recordings, musical compositions and trademarks, composed; recorded and utilized by the undersigned, and any derivative versions thereof (collectively, the 'Works'), including but not limited to the Works attached hereto as Exhibit 'A' and including, without limitation, any right to receive royalties or monetary interest therefrom, and the copyright and trademark to the Works, and any renewals and extensions thereof, throughout the universe." The document is signed by "An Authorized Signatory" of ARF.[7]

We emphasize that, although Galaz apparently testified regarding the meaning of this document at the reopened hearing, Segundo Suenos has declined to designate a record of that hearing on

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7 The name of the signatory is not printed and, in the absence of the reporter's transcript of the reopened trial, there is no evidence before us identifying the signatory.

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appeal. Thus, the only evidence of an assignment to Segundo Suenos on which it can rely on this appeal is this one-page document. In other words, Segundo Suenos can only prevail if it can establish that this document, as a matter oflaw, satisfies the writing requirement of the Copyright Act.

Segundo Suenos cannot meet this burden. The document does not "reasonably identify" its subject matter. It applies to AW's "right, title and interest . . . to the sound recordings, musical compositions and trademarks, composed, recorded and utilized by"ARF. It claims that it includes the works specified on "Exhibit 'A,' " but in the absence of such attachment, there are no works specifically identified. The assignment is not clear as to whether it applies to rights to musical works created by ARF (the "composed [or] recorded" language suggests as much), or the rights to musical works which have been assigned to ARF. Indeed, the absence of language specifically identifying the works in question as the works of Middlebrooks and Satchell, or as those works whose rights were (purportedly) transferred to ARF by the Middlebrooks and Satchell assignments, is telling -- there are certainly many ways in which the ARF-SegundoSuenos assignment could have been drafted to identify those particular musical works.

Segundo Suenos argues that the document's language assigning rights pertaining to musical works "utilized by" ARF is sufficient, standing alone, to encompass rights to the Middlebrooks and

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Satchell works, because ARF previously "utilized" those works by attempting to enforce its rights to them. While this could conceivably be a plausible interpretation of "utilize," it is certainly not the only one. Indeed, when considering the phrase "sound recordings, musical compositions and trademarks, composed, recorded and utilized by," a logical interpretation is that "recorded" refers to sound recordings, "composed" refers to "musical compositions" and "utilized refers to "trademarks." In other words, the phrase could be rewritten as "sound recordings recorded by, musical compositions composed by, and trademarks utilized by." Under this equally (if not more) plausible interpretation of the contract language, it very clearly would not encompass ARF's rights to musical works which were merely assigned to it. In short, Segundo Suenos has failed to meet its burden on appeal of establishing, as a matter of law, that the trial court erred in concluding that Segundo Suenos did not prove an assignment to it of ARF's purported rights to the Satchell and Middlebrooks music.

2. No Collateral Estoppel

In the Satchell case, Segundo Suenos argues that a ruling of the Ohio probate court confirming Segundo Suenos's right to the Satchell royalties should have collateral estoppel effect in this case, precluding the Satchell defendants from challenging both the assignment from Satchell's surviving spouse to ARF and the ARF assignment to Segundo

Suenos. Again, we have a limited record on appeal - this time, due to Segundo Suenos's failure to provide us with the relevant exhibits admitted into evidence at trial.[8] The only exhibits we have pertaining to this issue are those few which were attached to post-trial

briefing. Even on this limited record, however, Segundo Suenos's argument fails.

"The doctrine [of collateral estoppel], which precludes relitigation of issues argued and decided in prior proceedings, may only be applied if several threshold requirements are fulfilled. [Citation.] 'First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom

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8 The appellate record indicates that the exhibits were "released to their respective parties for safe-keeping." At oral argument on appeal, counsel for Segundo Suenos represented that he could augment the record with the necessary exhibits. As we discuss below, the exhibits before us conclusively defeat Segundo Suenos's collateral estoppel argument. Further augmentation would not change the result with respect to the inadequacy of the assignment. Segundo Suenos's failure in this regard was its failure to put the allegedly complete documentation before the trial court, not a failure to do so on appeal.

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preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.]' [Citation.] The burden of establishing these requirements rests with the party asserting the doctrine." (County of Los Angeles v. Superior Court (2000) 82 Cal.App.4th 819, 829.)

Segundo Suenos failed to establish the second element, that the issue was actually litigated in the previous case. The appellate record includes a transcript of a hearing before the Ohio probate court. Apparently, Segundo Suenos had approached the administrator of Satchell's estate, and asserted that Segundo Suenos should have been receiving royalty distributions that had been received (and distributed) by the administrator. The administrator then came to realize that, under copyright law, the royalty rights had not passed to the estate on Satchell's death, but instead passed directly to his surviving spouse and children. As such, the administrator believed that the royalty payments were not properly part of the estate, and that they therefore should be directly paid to Segundo Suenos, pursuant to the surviving spouse's alleged agreement with ARF and the alleged assignment to Segundo Suenos. At the hearing on the administrator's motion, the probate court agreed that the royalty payments were not part of the estate and that they therefore should be paid directly to Segundo Suenos pursuant to the purported assignment agreements. Satchell's surviving spouse attempted to argue against this disposition, challenging the validity of the purported assignment to ARF. The probate court

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refused to hear this argument, concluding that the issue was not before it. The probate court decided only that the funds in question were not part of the estate and appeared to belong to Segundo Suenos; whether the assignment was actually valid was an issue the probate court expressly stated was a matter for further litigation outside its jurisdiction.[9] As the probate court did not actually litigate the validity of the assignments, the Satchell defendants were not collaterally estopped from challenging them in this action.

DISPOSITION

The judgment in the Middlebrooks action is modified to provide that Tracy Draper-Blunt take nothing by her cross-complaint; as modified, the judgment is affirmed. The judgment in the Satchell action is affirmed. Respondents shall recover their costs on appeal from Segundo Suenos.

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CROSKEY, Acting P. J.

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9 Indeed, the trial court stated, "And I'm not sure [but] there is apparently some lawsuits going in California regarding that very issue. So I have no authority to deal with that."

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WE CONCUR:

KITCHING, J. ALDRICH, J.

APP26

B213178

THE SUPREME COURT OF CALIFORNIA

SEGUNDO SEUNOS, LLC,

Plaintiff and Appellant,

vs.

NASRIN SATCHELL, INDIVIDUALLY AND AS GUARDIAN FOR ALEXIS SATCHELL AND CLARENCE SATCHELL, ALEXIS SATCHELL, CLARENCE SATCHELL, DESHRAE SATCHELL, AND SHAWDEE SATCHELL,

Defendants and Respondents

On Appeal from the Superior Court for the County of Los Angeles

Case No.: BC355571

HONORABLE GREGORY W. ALARCON

and

The Court of Appeal for the State of California, Second Appellate District, Division Three

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APPELLANT'S PETITION FOR SUPREME COURT REVIEW

APP27

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INTRODUCTION

On December 9, 2009, The Court of Appeal for the State of California, Second Appellate District, Division Three, filed its opinion in this matter (a copy of which is attached hereto as Attachment 1). In the Court's opinion, the Court stated that with regard to the transfer of copyright interests in the music of the popular band "The Ohio Players" from Artist Rights Foundation, a California limited liability company ("ARF"), to Appellant Segundo Suenos, LLC, a Texas limited liability company ("Segundo Suenos", or "SSL"), the written document accompanying such transfer was legally insufficient pursuant to Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a)).

Segundo Suenos petitions the Court pursuant to Rules of Court Rule 8.500(b)(2), on the grounds

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that the Court of Appeal, and, indeed, the courts of California, lack jurisdiction to interpret and apply Section 204(a) of the United States Copyright Act. This issue concerns an important public policy in that defining jurisdiction between the state and federal courts over disputes regarding copyright interests requires sharp definition, particularly at this time, as the rise of the Internet has occasioned a marked increase in copyright disputes. The issue here is also unique in that the application of federal law came up late in the proceedings in the form of an affirmative defense, rather than in the claims themselves.

Interpretation of the Copyright Act is the exclusive province of the federal bench. *See* 28 USCA § 1338(a), *and see* Scholastic Entertainment, Inc. v. Fox Entertainment Group, Inc. (9th Cir. 2003)

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336 F.3d 982, 986. While this case initially appeared to be a simple contract dispute, in which the primary defenses were state law creatures such as the statute of limitations, ultimately it has been disposed of based on a peripheral issue determined by the interpretation of Section 204(a) of the United States Copyright Act. Since the courts of California are simply not empowered to make such decisions, Segundo Suenos seeks the review of this Court.

ISSUE PRESENTED FOR REVIEW

Do the courts of the State of California have jurisdiction to adjudicate matters which require the interpretation of Section 204(a) of the United States Copyright Act.

FACTUAL BACKGROUND

On June 4, 1998, ARF, Segundo Suenos'

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predecessor in interest, entered into an agreement with Defendants and Respondents NASRIN SATCHELL, both individually and as guardian for Defendants ALEXIS SATCHELL, CLARENCE SATCHELL, DESIRAE SATCHELL, AND SHAWDEE SATCHELL (collectively, "Defendants"). Defendants were the exclusive successors in interest and heirs of the late Clarence Satchell, a member of the musical group known as "The Ohio Players". The agreement between ARF and Defendants concerned Defendants' "collective interest in the sound recordings, musical compositions and trademarks, composed, recorded, and utilized by the late Clarence Satchell and any derivative versions thereof", and constituted an assignment of Defendants' interest in the musical rights of Clarence Satchell to ARF (the "Assignment Agreement")." See Clerk's Transcript,

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page 121 ("CT 121").

In June 2005, ARF's sole active member, Raul Galaz, transferred ARF's rights under the Assignment Agreement to Segundo Suenos, which is owned by Raul Galaz' father, Al Galaz. Raul Galaz then became, and remains, a consultant and representative of Segundo Suenos.

In November of 2005, Segundo Suenos discovered that Defendants had breached the Assignment Agreement by, among other things, collecting and keeping royalties behind the back of ARF and Segundo Suenos, which lead to the filing of this action in 2006.[1]

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1 Thereafter, Segundo Suenos filed Segundo Suenos v. Patricia Middlebrooks, et al. (LASC#BC358422 and 2nd App. District #B213251) against the heirs of another member of the Ohio Players. The cases were consolidated, but tried separately, with the Middlebrooks matter being tried the next day after this case. Both matters were the subject of a joint Statement of Decision, were consolidated by the Court of Appeal, and were both disposed of in the

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PROCEDURAL HISTORY

On January 30, 2008, the matter proceeded to a one day bench trial, where the Satchell-ARF Assignment Agreement was entered into evidence and Defendant Nasrin Satchell acknowledged signing the Assignment Agreement. (Reporter's Transcript ("RT") 113, lines 3-26, 118, lines 19-24)

Thereafter, the Trial Court entertained ten months of post trial briefing, culminating in a Statement of Decision, and on December 9, 2008, a judgment in which the Trial Court held for Defendants, not based on any defense to enforcement of the Assignment Agreement itself as to Defendants, but on the grounds that Segundo Suenos lacked standing for failing to establish that the assignment of Mr. Satchell's music rights from ARF to Segundo

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same Opinion by the Court of Appeal.

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Suenos satisfied the requirements of Section 204(a) of the United States Copyright Act. The Trial Court's Statement of Decision is attached hereto as Attachment 2.

To Segundo Suenos, the decision was shocking, thoroughly flawed on its face, and clearly the product of excessive delay and over briefing. The Trial Court had concluded (1) that the ARF-Segundo Suenos' assignment of rights that ARF obtained from Defendants did not satisfy the requirements of Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a)), (2) that Raul Galaz, a member of ARF, lacked the authority to make such an assignment to Segundo Suenos, and (3) that the Trial Court was not bound by the ruling of an Ohio Probate Court on the very issue of Segundo Suenos' rights vis a vis Defendants, despite the fact that the

Ohio Probate Court had necessarily found that the subject rights were transferred pursuant to the ARF-Segundo Suenos' assignment.

On appeal, the Second District upheld the Trial Court's first conclusion on the grounds that the Assignment Agreement did not satisfy the requirements of Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a)).[2] See Attachment 1, pages 6-9. Segundo Suenos petitioned the Second District for re-hearing with regard to the factual record and application of Section 204(a), and such petition was denied.

Thus, while this matter included many other

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2 The Second District did not rule on the Trial Court's second conclusion, which was clearly invalid pursuant to Corporations Code Section 17157 (which provides that "every member [of a limited liability company] is an agent of the limited liability company" and may bind such company), and upheld the Trial Court's ruling that it was not bound by the Ohio Probate Court ruling.

issues and circumstances, ultimately Segundo Suenos' claim was defeated because the Trial Court and Second District's concluded that the ARF-Segundo Suenos' assignment did not satisfy the requirements set forth by Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a))–an argument which was not even raised until post trial briefing. In doing so, the Trial Court and Second District interpreted the application of Section 204(a) of the Copyright Act and stepped beyond their jurisdiction, thus requiring the intervention of this Supreme Court.

ARGUMENT

This matter began as a simple contract action. After assigning their rights to collect copyright

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royalties to ARF, Defendants nevertheless availed themselves of opportunities to direct payments to themselves, which they concealed and kept all for themselves. When this was eventually discovered, Segundo Suenos (as successor in interest to ARF) demanded its share of money from Defendants and was rebuffed. The ensuing one-day lawsuit was one of proving up Defendants assignment to ARF and calculating damages.

After trial, the Trial Court invited post trial briefs, then more such briefs, and then even more. In the end, after eight months and fifteen (15) post trial briefs (and nineteen 19 post trial briefs on the same issues in Segundo Suenos v. Patricia Middlebrooks, et al. (LASC#BC358422)), the Trial Court issued a Proposed Statement of Decision in which the Court did not decide the matter based on

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whether or not Defendants had assigned their rights to ARF, or breached that agreement. Rather, it embraced the "sub rosa" issue of Segundo Suenos' standing to bring the action, finding that pursuant to Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a)), Segundo Suenos had failed to prove that ARF had assigned its rights in the Assignment Agreement to it.

This was astonishing in that Raul Galaz, who was on "both sides" of the transaction, unequivocally testified that such assignment had been made, and there was no evidence to the contrary. *See* Reporter's Transcript: page 26, line 24 to page 27, line 1, page 6, lines 23 to 26, page 57, lines 23 to 26, page 62, lines 8 to 27, and page 107, lines 16 to 19. Later, trial was reopened and the ARF-Segundo Suenos written assignment agreement itself was entered

into evidence, seemingly putting the matter beyond question. Nevertheless, the Trial Court decided that the ARF-Segundo Suenos' written assignment agreement did not satisfy the requirements of Section 204(a) of the United States Copyright Act. The Second District reached the same conclusion and affirmed the Trial Court's ruling.

This Court should grant review because, as stated, the conclusions of the Trial Court and the Second District were based upon those court's interpretation of the United States Copyright Act when such interpretations are the exclusive province of the federal courts. Specifically, it is the federal judiciary alone which can determine under what circumstances copyright interests are created, exist or are transferred. *See* Scholastic Entertainment, Inc. v. Fox Entertainment Group, Inc. (9th Cir.

2003) 336 F.3d 982, 986; Image Software, Inc. v. Reynolds & Reynolds Co. (10th Cir. 2006) 459 F.3d 1044, 1051.

This is different from situations in which a dispute concerns claims of ownership over rights which "arise from" federal statutes relating to patents, copyrights, trademarks. In those cases, state law governing contracts and torts would apply. "(T)he question of who owns the patent rights and on what terms typically is a question exclusively for state courts." Jim Arnold Corp. v. Hydrotech Systems, Inc. (Fed. Cir. 1997) 109 F.3d 1567, 1572; Prize Frize, Inc. v. Matrix (U.S.) Inc. (9th Cir. 1999) 167 F.3d 1261, 1264.

Indeed, this case was filed in state court and proceeded to trial because it appeared to be just such a case. Specifically, it was a dispute about who

owned the Ohio Players' music interests, which, albeit were a creature of, and "arose from" federal copyright law; but the dispute itself was really only a breach of contract action about who owned those rights and who was entitled to the money derived from them.

It was only after trial, during the interminable post trial briefing marathon, that the issue of standing came to the center of the action. At that point, the Trial Court (and later the Second District[3]) "crossed the Rubicon" from state to federal

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3 It must be noted that on appeal Segundo Suenos addressed the merits of the Trial Court's conclusions, not its jurisdiction. However, this Supreme Court is not constrained from reviewing issues not brought before the Court's of Appeal, rather it extends to any issue presented by the case. *See* Rules of Court Rule 8.516(b)(2); People v. Braxton (2004) 34 Cal.4th 798, 809, 22 Cal.Rptr.3d 46, 52; Cedars-Sinai Med. Ctr. v. Super.Ct. (Bowyer) (1998) 18 Cal.4th 1, 5-7, 74 Cal.Rptr.2d 248, 250-251 & fn. 2; and People v. Birks (1998) 19 Cal.4th 108, 116, 77 Cal.Rptr.2d 848, 852, fn. 6.

jurisdiction when it decided to interpret whether or not the underlying ARF-Segundo Suenos assignment satisfied the provisions of Section 204(a) of the United States Copyright Act (17 U.S.C. Section 204(a)). In so doing, it was not merely applying state contract law to rights emanating from a federal statute; it was deciding whether or not Segundo Suenos possessed the rights in the first place, and interpreting whether or not the ARF-Segundo Suenos written assignment satisfied the criteria of a federal standard articulated in Section 204(a) of the Copyright Act. However, adjudicating the validity of copyright or patent rights themselves are claims which "arise under" such laws, requires an interpretation and construction of those laws, and is therefore the exclusive jurisdiction of the federal courts. *See* Christianson v. Colt Industries

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Operating Corp. (1988) 486 U.S. 800, 807-808, 108 S.Ct. 2166, 2173. As such, the Trial Court and the Second District stepped beyond their jurisdiction in interpreting Section 204(a) of the United States Copyright Act to invalidate the ARF-Segundo Suenos' assignment.

This is an issue which begs for clarification from this Court. Of the few cases cited herein, most address patent cases, and only a few copyright. The distinction between copyright claims which merely concern state law principals such as breach of contract, and those which go to fundamental questions of the existence of the rights themselves is often not an easy one, and one upon which the Court's guidance would be helpful. Moreover, with the advent of the Internet and the widespread dissemination of a cornucopia of copyrighted

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material thereon (music, books, movies, etc.), copyright disputes have become more common and firm guidance on where jurisdiction will lie for such disputes is imperative.

This case is also unique in that the application of federal law was not implicated by the pleadings herein, but only arose as a "johnny come lately" affirmative defense. The courts and practitioners require guidance on what should take place in such a circumstance: when an affirmative defense which requires the application and interpretation of federal law presents itself in trial or thereafter, what is the appropriate response for a state court judge? Should the judge reject the defense because it requires the application and interpretation of federal law? Or should the judge halt proceedings and direct the parties to federal court? Or should the judge

essentially don a "federal hat" and go ahead and interpret federal law?

Presently these questions are not answered. This case provides the Court with an opportunity to do so.

CONCLUSION

For the foregoing reasons, Segundo Suenos petitions this Court for review.

Dated this 13th day of January 2010

Respectfully submitted,

PICK & BOYDSTON, LLP

By: _____s/_____

Brian D. Boydston
Attorneys for Appellant Segundo Suenos, LLC

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APPELLANTS' WORD COUNT

CERTIFICATION

I, Brian D. Boydston, hereby certify that Appellant's Petition for Re-Hearing, filed on January 13, 2010, contains 2612 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: January 13, 2010

_____s/_____

Brian D. Boydston,

Esq.

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